

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 19, 2006
Bulk Item: Yes X No

Division: County Attorney
Staff Contact Person: Pedro Mercado

AGENDA ITEM WORDING:

Approval of Resolution authorizing the County Attorney's Office to initiate conflict resolution procedures against the City of Key West.

ITEM BACKGROUND:

The City of Key West enacted a stormwater utility ordinance in 2002. Key West International Airport commissioned two engineering studies showing the fee the City was charging the County was excessive. The County has met with City representatives on several occasions to try to resolve the disagreement over the appropriate charge. Pursuant to the County's most recent attempt to resolve the dispute, the County commissioned a drainage calculation study. The study has been completed and again shows the fees being charged by the City are excessive. At the June 2006 BOCC meeting, the County Attorney's Office made a presentation, along with outside counsel, and requested direction as to how the BOCC wished the County Attorney's Office to proceed.

PREVIOUS RELEVANT BOCC ACTION:

On June 21, 2006, upon recommendation of outside counsel, the BOCC directed the County Attorney's Office to move forward with the drafting of the resolution.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

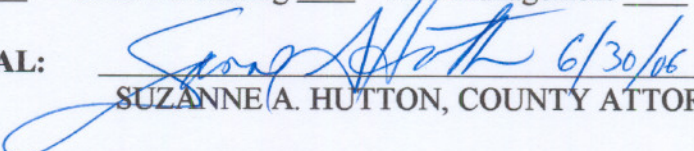
SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No X

AMOUNT PER MONTH

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

 6/30/06
SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, AUTHORIZING THE INITIATION OF CONFLICT RESOLUTION PROCEDURES AGAINST THE CITY OF KEY WEST AS PROVIDED BY CHAPTER 164 OF THE FLORIDA STATUTES.

WHEREAS, the City of Key West (the "City") on June 5, 2001, adopted Ordinance 01-06 (codified as Section 74-363, Code of the City of Key West), which imposed Stormwater User Fees on every residential and non-residential property, other than exempt property, located within its municipal boundaries; and

WHEREAS, Key West International Airport, which is owned by Monroe County (the "County"), is located within the municipal boundaries of the City and is subject to the Stormwater User Fee imposed by the City; and

WHEREAS, pursuant to the City Code, Key West International Airport appealed the calculation of the Stormwater User Fee as imposed by the City; and

WHEREAS, on January 1, 2002, Key West International Airport issued Purchase/Service Order No. 02/03-6 to URS to provide an analysis of airport property to determine the extent of stormwater retained on site and treated to calculate the eligible credit from the City's Stormwater User Fee; and

WHEREAS, the City has been provided with copies of the studies; and

WHEREAS, as a result of discussions with the County, the City adjusted the amount of the Stormwater User Fee to reflect the extent of impervious surface located at the Key West International Airport; and

WHEREAS, there continues to be other factors relating to the calculation of the appropriate amount of Stormwater User Fee upon the Key West International Airport which have not been addressed by the City. These include, but are not limited to, the following:

A. The County has constructed at Key West International Airport an extensive retention and disposal system that is able to retain and treat all or substantially all stormwater from the Airport and, therefore, the Airport is not discharging into, or otherwise impacting upon the City's stormwater utility system.

B. The City is requiring all development to meet a standard for retention of stormwater sufficient to meet a twenty-five year storm event over a 72-hour period, however, the Stormwater User Fee imposed by the City is calculated on a substantially greater standard than required of development or provided by the City.

C. The City is proposing to utilize the proceeds of the Stormwater User Fee on improvements and activities that are unrelated to and provide no benefit to the Key West International Airport.

WHEREAS, as a result of these and other factors, the County believes that the City is charging an excessive fee and that it constitutes an unlawful tax; and

WHEREAS, Florida law requires that the amount and use of the Stormwater User Fee be related to the impacts on the system and the actual expenditure of the proceeds.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

1. The following are findings of fact by the BOCC regarding the calculation of the appropriate amount of Stormwater User Fee upon the Key West International Airport which have not been adequately addressed by the City:

A. The County has constructed at Key West International Airport an extensive retention and disposal system that is able to retain and treat all or substantially all stormwater from the Airport and, therefore, the Airport is not discharging into, or otherwise impacting upon the City's stormwater utility system.

B. The City is requiring all development to meet a standard for retention of stormwater sufficient to meet a twenty-five year storm event over a 72-hour period, although the Stormwater User Fee imposed by the City is calculated on a substantially greater standard than required of development or provided by the City.

C. The City is proposing to utilize the proceeds of the Stormwater User Fee on improvements and activities that are unrelated to and provide no benefit to the Key West International Airport.

D. Florida law requires that the amount and use of the Stormwater User Fee be related to the impacts on the system and the actual expenditure of the proceeds.

2. As a result of these and other factors, the County believes that the City is charging an excessive fee and that it constitutes an unlawful tax; an

3. Monroe County shall initiate the conflict resolution procedures pursuant to Chapter 164, Florida Statutes, as required prior to initiating court proceedings to resolve the conflict between the City of Key West and Monroe County as to the appropriate Stormwater User Fee for the Key West International Airport.

4. Within five (5) days following the adoption of this resolution, the County Administrator is directed to send a letter and a certified copy of this Resolution to the Chief Administrator of

the City of Key West by certified mail, return receipt requested. The letter shall contain, at a minimum, the information required by section 164.1052(1), Florida Statutes.

5. The Monroe County Attorney's Office is the authorized representative of the County at the conflict resolution hearing.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on _____, 2006.

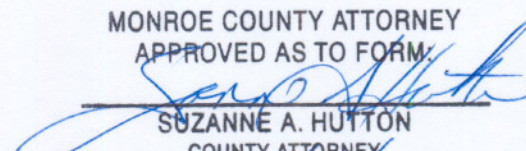
Mayor Charles McCoy	_____
Mayor Pro Tem Dixie Spehar	_____
Commissioner George Neugent	_____
Commissioner Glenn Patton	_____
Commissioner David Rice	_____

(Seal)
Attest: Danny L. Kolhage, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By: _____
Mayor/Chairperson

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:


SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 6/30/06